new jersey department of community affairs
division of local government services

# Local Finance Notice

LFN 2021-11

June 4, 2021

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## American Rescue Plan Act of 2021: Requirements for Grant Funds

The federal American Rescue Plan Act of 2021, signed into law on March 11, 2021, was enacted to provide funding for COVID-19 pandemic response and recovery. Among the key elements of the Act is the Coronavirus Local Fiscal Recovery Fund (LFRF). All municipalities and counties will receive LFRF funds in two tranches, with the federal government releasing the second tranche next year.

The United States Department of Treasury (U.S. Treasury) has issued an Interim Final Rule regulating county and municipal use of LFRF funds. Other reference documents include a Fact Sheet, FAQ document, and Quick Reference Guide. Please thoroughly review all materials to ensure proper use and accounting of LFRF funds.

A valid DUNS number is required to comply with LFRF reporting requirements. Any local unit without a valid DUNS number must visit Dun & Bradstreet's DUNS request portal or call 1-866-705-5711 to begin the registration process. All LFRF recipients must also have an active registration with the federal government's System for Award Management (SAM) database. SAM database registration must be renewed annually. An entity that does not have an active SAM registration must immediately begin the entity registration or renewal process, as registrations can take up to three weeks. A guide to the SAM registration process can be found here.

All LFRF recipients must execute Assurances of Compliance with Title VI of the Civil Rights Act; to be valid the Title VI Assurances document must include the LFRF recipient entity's name and be signed and dated by the designated Authorized Representative of the entity.

The U.S. Treasury will distribute LFRF proceeds directly to counties and to those municipalities classified as metropolitan cities under the Act (population equal to or greater than 50,000). Counties and metropolitan cities must directly request grant funding from the U.S. Treasury. Direct allocation amounts to New Jersey counties are located on pages 40-41 of the Allocation for Counties table, with those for New Jersey metropolitan cities located on pages 16-18 of the Allocation for Metropolitan Cities table. Counties and metropolitan municipalities must execute a Financial Assistance Agreement with the federal government.

Local Fiscal Recovery Fund proceeds for municipalities that are not classified as metropolitan cities under the Act (population less than 50,000; also called "non-entitlement units of local government"), will be distributed through the State Treasury who will serve as intermediary. All non-entitlement units (NEUs) must execute a specific Award Terms and Conditions Agreement provided by U.S. Treasury. When requesting payment from the State, NEUs must submit a Local Fiscal Recovery Fund Distribution Request and Certification Form to the Division of Local Government Services along with all information and documents required by the U.S. Treasury for disbursing LFRF proceeds.

## Permitted Use of Grant Funds

Counties and municipalities may expend LFRF funds for the one or more of the following purposes:

- Replacing lost public sector revenue
- Investing in water, sewer, and broadband infrastructure
- Providing premium pay for essential workers
- Supporting public health expenditures
- Addressing COVID-19 related negative economic impacts
- Addressing the disproportionate public health and economic impacts of the crisis on the hardest-hit communities, populations, and households

Examples of permitted uses in each of the above-referenced categories are summarized below. For expenditures outside of revenue replacement to be LFRF-eligible under the U.S. Treasury Interim Final Rule, costs must be incurred **on or after March 3, 2021 but must be obligated no later than December 31, 2024** to be LFRF-eligible. The "period of performance" will run until December 31, 2026 to allow recipients a reasonable amount of time to complete LFRF-funded projects. For example, construction on water, sewer or broadband infrastructure projects may continue past December 31, 2024 assuming that funds were obligated prior to that date; in such cases the construction period may continue until December 31, 2026.

Counties and municipalities may pass along LFRF funds for eligible uses to third parties such as individuals, authorities, fire districts, boards of education, nonprofits, and small businesses; however, the county or municipality will be responsible for ensuring any subrecipients adhere to federal requirements.

## Replacing Lost Public Sector Revenue

U.S. Treasury's Interim Final Rule establishes a methodology for use in calculating COVID-19 related general revenue reduction. For administrative convenience, Treasury's Interim Final Rule allows recipients to presume that any diminution in actual revenue relative to the expected trend is due to the COVID-19 public health emergency.

Counties and municipalities will compute the extent of their reduction in general revenue by comparing their actual revenue to an alternative representing what could have been expected to occur in the absence of the pandemic. Analysis of this expected trend begins with the last full fiscal year prior to the public health emergency and projects forward at either the recipient's average annual revenue growth over the three full fiscal years prior to the public health emergency or 4.1%, whichever is greater.

The revenue calculation must exclude refunds and other correcting transactions, proceeds from issuance of debt, proceeds from the sale of investments, agency or private trust transactions, and intergovernmental transfers from the federal government, including transfers made pursuant to section 9901 of the American Rescue Plan Act.

Although the Interim Rule states that general revenue does not encompass utilities, the Interim Rule does not define the term. The U.S. Treasury LFRF FAQ at Section 3.9 states that a recipient unsure of whether a particular revenue source counts as a "general revenue" may consider the classification and instructions used to complete the U.S. Census Bureau's Annual Survey of State and Local Government Finances. The Census Bureau limits the scope of the word "utility" to only four types of local government utilities: water supply, electric power, gas supply, and public mass transit. See Glossary – Annual Survey of State and Local Government Finances. See also the Government Finance and Employment Classification Manual (U.S. Census Bureau Oct. 2006). As such, the State's position is that revenues for all county and municipal utilities except water utilities, electric utilities, and water supply-related revenues from combined water/sewer utilities qualify under the Interim Rule's definition of "general revenue" and thus may be included in a lost revenue calculation. Please note that this definition of "general revenue" would leave out water supply-related losses incurred by a municipal utilities authority. Lost revenues from local government-owned bus systems, except those systems established solely to transport elementary and secondary school pupils, should be excluded from a revenue loss calculation.

To calculate the extent of the reduction in revenue at each of these dates, recipients should follow a four-step process:

Step 1: Identify revenues collected in the most recent full fiscal year prior to the public health emergency (i.e., last full fiscal year before January 27, 2020), called the *base year revenue.*

Step 2: Estimate *counterfactual revenue*, which is equal to *base year revenue* * [(1 + *growth adjustment*) ^( *n*/12)], where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal years prior to the COVID-19 public health emergency.

<u>Step 3</u>: Identify *actual revenue*, which equals revenues collected over the past twelve months as of the calculation date.

An Excel-based [revenue loss calculation worksheet]() is available on the Division's Municipal and County Budgets webpage under the American Rescue Plan (ARP) Forms heading.

Upon receiving LFRF Funds, recipients may immediately calculate the reduction in revenue as of December 31, 2020 and deploy funds to address any shortfall. Once a shortfall in revenue is identified, recipients will have broad latitude to use this funding to support government services, up to this amount of lost revenue. Recipients will have the opportunity to re-calculate revenue loss as of December 31st in 2021, 2022, and 2023 to capture any lagging impact of the crisis on revenues. Please review the Interim Rule and reference materials for further details on what can be factored as revenue loss.

<u>Water, Sewer & Broadband Infrastructure</u>

Counties and municipalities may invest LFRF funds toward necessary improvements to their water, wastewater, and stormwater infrastructures, including projects that address the impacts of climate change. Recipients may use this funding to invest in an array of drinking water infrastructure projects, such as building or upgrading facilities and transmission, distribution, and storage systems, including the replacement of lead service lines. Funds may also be used for wastewater infrastructure projects including constructing publicly-owned treatment infrastructure, managing and treating stormwater or subsurface drainage water, facilitating water reuse, and securing publicly-owned treatment works. Eligible uses of LFRF funds for water and sewer projects align with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's (EPA) Clean Water and Drinking Water State Revolving Funds. Green infrastructure projects that support stormwater system resiliency could include rain gardens that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces.

Investments in broadband must be made in areas lacking a wireline connection that reliably delivers minimum speeds of 25 Mbps download and 3 Mbps upload. Broadband infrastructure projects should deliver services offering reliable 100 Mbps download and 100 Mbps upload speeds unless impracticable due to topography, geography, or financial cost. In addition, recipients are encouraged to pursue fiber optic investments. Recipients are also encouraged to prioritize projects that achieve last-mile connections to households and businesses. Counties and municipalities intending to directly or indirectly undertake a broadband project should review [P.L. 2007, c. 191]() (N.J.S.A. 40:9D-1 through 40:9D-8) to determine whether the law applies to the project and, if so, whether the law requires Local Finance Board approval of the project.

Necessary investments include projects that are required to maintain a level of service that, at minimum, meets applicable health-based standards, accounting for resilience to climate change, or establishes or improves broadband service to unserved or underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds. U.S. Treasury's Interim Final Rule also encourages recipients to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements offering wages at or above the prevailing rate and incorporating local hire provisions. Please note that P.L. 2021, c. 69, effective April 30, 2021, expands the permissible use of project labor agreements beyond contracts for building-based public works projects to also encompass projects such as highways, bridges, pumping stations, water supply systems and sewage treatment plants, so long as those contracts are subject to prevailing wage and valued at over $5 million exclusive of land acquisition costs.

## Premium Pay for Essential Workers

LFRF funds may be used by recipients to provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency, or to provide grants to third-party employers (including local government subcontractors) with eligible workers performing essential work. Eligible workers are those who have been and continue to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities. Essential work is work involving regular in-person interactions or regular physical handling of items that were also handled by others such as, but not necessarily limited to, staff in public health, public safety, social services, along with home health aides, janitors, and child care workers. Premium pay is defined as an amount up to $13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed $25,000 per eligible worker. Employers may use LFRF funds to offer retrospective premium pay, recognizing that many essential workers have not yet received additional compensation for work performed.

LFRF funds directed toward premium pay should prioritize lower-income eligible workers performing essential work. Premium pay that would increase a worker's total pay above 150% of the greater of the state or county average annual wage requires specific justification for how it responds to the needs of these workers.

## Supporting Public Health Expenditures

LFRF funds may be allocated toward a broad range of public health needs across COVID-19 containment and mitigation, medical expenses, behavioral healthcare, and public health resources.

With respect to COVID-19 containment and mitigation, examples of eligible costs include, but are not necessarily limited to vaccination programs, public communication efforts, enhancements to the design and execution of public health programs, and ventilation improvements in congregate settings, health care settings, or other key locations, as well as capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics. Also eligible are costs of medical care for treatment of COVID-related longer-term physical ailments, along with measures to treat mental health, substance abuse, or other behavioral healthcare needs exacerbated by the pandemic. Payroll and covered benefits expenses for public health, healthcare, human services, public safety and similar employees, are eligible to the extent that these employees work on the COVID-19 response.

To assess whether additional uses would be eligible under the public health expenditure category, a county or municipality should identify an effect of COVID-19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.

## Addressing COVID-19 related Negative Economic Impacts

Eligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID-19 public health emergency and whether, and the extent to which, the use would respond or address this harm. A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID-19 public health emergency. While economic impacts may either be immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

In addition, the eligible use must "respond to" the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.

Examples of eligible uses through which to address negative economic impacts include, but are not necessarily limited to, job training, household economic assistance, loans or grants to small businesses and non-profits, economic assistance to industries disproportionately impacted by the pandemic (e.g. travel, tourism, hospitality), and rehiring local government staff laid off due to the pandemic. Payroll, covered benefit, and other costs associated increasing the number of employees up to the number a local unit employed on January 27, 2020 are eligible.

Before using LFRF funds to rehire staff, counties and municipalities should consider the long-term budgetary impact beyond when LFRF funds run out and are encouraged to explore alternatives like shared services or implementing new technology. The Division's Local Assistance Bureau offers comprehensive management consulting services at no cost.

## Addressing Disproportionate Public Health and Economic Impacts

LFRF funds may be used with a particular focus on addressing disproportionate COVID-19 economic and public health impacts on the hardest-hit communities, populations, and households. Such services must be provided within a Qualified Census Tract (a low-income area as designated by the U.S. Department of Housing and Urban Development (HUD)), to families living in Qualified Census Tracts, or to other populations, households, or geographic areas disproportionately impacted by the pandemic. Eligible services include:

- Addressing health disparities and the social determinants of health through funding for
  - community health workers

  - public benefits navigators
  - lead hazard remediation
  - community violence intervention programs
- Investments in housing and neighborhoods
  - services for the homeless
  - affordable housing development
  - housing vouchers
  - residential counseling and housing navigation assistance facilitating moves to neighborhoods with high economic opportunity
- Addressing educational disparities
  - new or expanded early learning services
  - additional resources for high-poverty districts
  - tutoring and after-school programs
  - services addressing social, emotional, and mental health needs
- Promoting healthy childhood environments
  - new or expanded high quality childcare
  - home visiting programs for families with young children
  - enhanced services for child welfare-involved families and foster youth

## Prohibited Uses

States and territories may not use LFRF to directly or indirectly offset a reduction in net tax revenue due to a change in law from March 3, 2021 through the last day of the fiscal year in which the funds provided have been spent. Although this prohibition does not expressly extend to counties and municipalities, because LFRF funds are to be utilized for affirmative assistance measures, those funds should not be used to merely reduce the county or municipal tax levy.

U.S. Treasury also does not consider interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt to be a permitted use of LFRF funds as this use is not considered directly related to the provision of government services. Similarly, LFRF funds cannot be used to satisfy any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services. In addition, replenishing financial reserves (e.g., rainy day or other reserve funds) would not be considered provision of a government service, since such expenses do not directly relate to the provision of government services.

Deposits into a pension fund to reduce an accrued, unfunded liability are prohibited. However, counties and municipalities may use LFRF funds for routine payroll contributions for employees whose wages and salaries are an eligible use of funds.

## Duplication of Benefits

A duplication of benefits occurs when an applicant receives assistance from multiple sources intended for the same purpose, or the amount of assistance provided exceeds the total identified need. Counties and municipalities should review the allocation of assistance received through the Coronavirus Relief Fund (CRF), FEMA , the Small Business Administration, other State, county, and local programs, and any other resources for COVID-19 relief to ensure LFRF dollars are not duplicating other relief. Particular attention should be paid to public health expenditures as the CRF and LFRF programs permit many of the same uses. Funds found to be distributed in excess of an unmet need may be subject to clawback.

Counties and municipalities should avoid duplicating assistance programs already offered through the State. Instead, you are strongly encouraged to utilize the State's existing infrastructure (such as the infrastructure to administer CVERAP 2) to administer funds for rental, utility, water or other assistance programs on behalf of your community. Please note that the State administration can ensure the funds you dedicate to these programs are only expended on your residents. Examples include the various housing assistance and rental assistance programs offered through the Department of Community Affairs' Division of Housing and Community Resources, along with the Economic Development Authority's Small Business Emergency Assistance Grant Program.

To avoid a duplication of benefits between programs funded by State-created State Fiscal Recovery Funds (SFRF) and those locally created programs funded by LFRF proceeds, the Department of Community Affairs will be requiring information from all county and municipal LFRF recipients on programs created to determine whether a duplication of benefits risk may exist between a State and local program. If a duplication risk is identified, the Department will request more detailed beneficiary information from the county or municipality to further examine whether a duplication of benefits has or may occur. Additional guidance on this requirement will be forthcoming. The State will also make its SFRF program information available to all counties and municipalities to allow them to conduct their own federally required duplication of benefits review.

## Reporting Requirements

Counties and those municipalities receiving LFRF funds directly from the federal government (i.e. metropolitan cities) will be required to submit quarterly Project and Expenditure reports through the end of the award period on December 31, 2026, as well as an interim report to be filed no later than August 31, 2021. The interim report will include a recipient's expenditures by category at the summary level from the date of award to July 31, 2021. The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds. The reports will include the same general data (e.g., on obligations, expenditures, contracts, grants, and sub-awards) as those submitted by recipients of CRF proceeds, with some modifications. Modifications will include updates to the expenditure categories and the addition of data elements related to specific eligible uses and other specific reporting requirements. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021 and must be submitted to U.S. Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to U.S. Treasury within 30 days after the end of each calendar quarter.

Municipalities receiving LFRF funds through the State will be required to submit annual Project and Expenditure reports until the end of the award period on December 31, 2026. The initial annual Project and Expenditure report will cover activity from the date of award to September 30, 2021 and must be submitted to U.S. Treasury by October 31, 2021. Subsequent annual reports must be submitted to U.S. Treasury by October 31 each year.

If greater than 250,000 in population, counties and metropolitan cities must also submit to U.S. Treasury an annual Recovery Plan Performance report. The Recovery Plan Performance report will include key performance indicators identified by the recipient and some mandatory indicators identified by U.S. Treasury, as well as programmatic data in specific eligible use categories and other specific reporting requirements. The initial Recovery Plan Performance report will cover the period from the date of award to July 31, 2021 and must be submitted to U.S. Treasury by August 31, 2021. Thereafter, Recovery Plan Performance reports will cover a 12-month period, and recipients will be required to submit the report to U.S. Treasury within 30 days after the end of the 12-month period. The second Recovery Plan Performance report will cover the period from July 1, 2021 to June 30, 2022 and must be submitted to U.S. Treasury by July 31, 2022. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient.

U.S. Treasury will provide additional guidance and instructions on the reporting requirements LFRF funds at a later date.

## Budgeting and Recording American Rescue Plan Act of 2021 Receipts

Upon receipt of the LFRF proceeds from the state or federal government, the local units are to record the proceeds as a grant fund unappropriated reserve. The unappropriated reserve account will be the primary account where funds will be distributed for revenue losses, COVID-19 expenditures, and water, sewer, and broadband capital projects.

When using LFRF funds for revenue losses, the local unit must submit a completed Revenue Loss Calculation Excel Worksheet to LFRF@dca.nj.gov using the following file name format: <muni code_local unit name_ARP Revenue Loss Calc_4 digit year>.

The revenue loss calculation is to be inserted on Sheet 10 of the 2021 Budget. If the local unit adopted a COVID Special Emergency for loss of revenue, regardless of whether or not COVID notes were issued, then the LFRF funds should be used to offset the special emergency deferred charge appropriation as set forth in Local Finance Notice 2020-24.

If LFRF proceeds are used for COVID-19 allowable expenditures, the local unit must adopt a Chapter 159 resolution, record the appropriation on Sheet 24 of the budget document, and move the proceeds from the unappropriated reserve account to a grant fund appropriation account. When LFRF proceeds are utilized for a capital expenditure, a capital ordinance is required and the proceeds must be recorded as a capital fund appropriation by moving the funds from the unappropriated reserve account to the capital appropriation account. The Chapter 159 resolution, which must be submitted to the Division's Chapter 159 inbox at 159_lgs@dca.state.nj.us, will be automatic and does not require Division approval.

Compliance with federal government requirements on use of funds and supporting documentation are the responsibility of the local unit.

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Approved: Jacquelyn A. Suárez, Director

| Document | Internet Address |
|---|---|
| American Rescue Plan Act of 2021 | https://www.congress.gov/bill/117th-congress/house-bill/1319/text |
| U.S. Treasury LFRF Site | https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds |
| LFRF Interim Final Rule | https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf |
| LFRF Fact Sheet | https://home.treasury.gov/system/files/136/SLFRP-Fact-Sheet-FINAL1-508A.pdf |
| LFRF FAQ Document | https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf |
| LFRF Quick Ref. Guide | https://home.treasury.gov/system/files/136/SLFRP-Quick-Reference-Guide-FINAL-508a.pdf |
| DUNS Request Portal | https://fedgov.dnb.com/webform |
| SAM Database Regis. | https://sam.gov/SAM/ |
| SAM Registration Guide | https://home.treasury.gov/system/files/136/New-to-SAM.gov-for-Financial-Assistance-April-2021.pdf |
| Assurances of Civil Rights Act Compliance | https://home.treasury.gov/system/files/136/Assurances-of-Compliance-with-Title-VI-of-the-Civil-Rights-Act.pdf |
| LFRF Funding Request: Counties & Metro Cities | https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-fund/pre-award-requirements |
| County Allocation Table | https://home.treasury.gov/system/files/136/fiscalrecoveryfunds_countyfunding_2021.05.10-1a-508A.pdf |
| Metro City Allocations | https://home.treasury.gov/system/files/136/fiscalrecoveryfunds-metrocitiesfunding1-508A.pdf |
| Financial Assistance Agreement – Counties & Metropolitan Cities | https://home.treasury.gov/system/files/136/Financial-Assistance-Agreement-Local-Governments.pdf |
| Non-Entitlement Units | https://home.treasury.gov/system/files/136/List_of_Local_Governments.xlsx |
| NEU Terms & Cond. | https://home.treasury.gov/system/files/136/NEU_Award_Terms_and_Conditions.pdf |
| LFRF Cert Form (NEUs) | https://www.nj.gov/dca/divisions/dlgs/resources/fiscal_docs/bud_forms/ARP_Funding_Request_and_Certification_Form.xls |
| Annual Survey Glossary | https://www.census.gov/programs-surveys/gov-finances/about/glossary.html |
| Govt. Finance & Empl. Classification Manual | https://www2.census.gov/govs/pubs/classification/2006_classification_manual.pdf |
| P.L. 2007, c. 191 | https://www.njleg.state.nj.us/2006/Bills/PL07/191_.PDF |
| P.L. 2021, c. 69 | https://www.njleg.state.nj.us/2020/Bills/S3500/3414_R2.PDF |
| Local Assistance Bureau | https://www.nj.gov/dca/divisions/dlgs/programs/lab.html |

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|---|---|
| DCA COVID-19 Housing Assistance | https://www.nj.gov/dca/divisions/dhcr/covid19housingassistance.html |
| DCA COVID-19 Rental Assistance | https://www.nj.gov/dca/cverap2.shtml |
| EDA Small Business Emergency Assistance | https://business.nj.gov/covid/small-business-emergency-assistance-grant-program |
| Revenue Loss Calculation Worksheet | https://www.nj.gov/dca/divisions/dlgs/resources/fiscal_docs/bud_forms/ARP_Revenue_Loss_Calculation_Worksheet.xlsx |
| LFN 2020-24 | https://www.nj.gov/dca/divisions/dlgs/lfns/20/2020-24.pdf |